

§ 633.27

(j) Criteria and procedures to be used for testing the operational system or its major components;

§ 633.27 Implementation of a project management plan.

(a) Upon approval of a project management plan by the Administrator the recipient shall begin implementing the plan.

(b) If a recipient must modify an approved project management plan, the recipient shall submit the proposed changes to the Administrator along with an explanation of the need for the changes.

(c) A recipient shall submit periodic updates of the project management plan to the Administrator. Such updates shall include, but not be limited to:

- (1) Project budget;
 - (2) Project schedule;
 - (3) Financing, both capital and operating;
 - (4) Ridership estimates, including operating plan; and
 - (5) Where applicable, the status of local efforts to enhance ridership when estimates are contingent, in part, upon the success of such efforts.
- (d) A recipient shall submit current data on a major capital project's budget and schedule to the Administrator on a monthly basis.

§ 633.29 PMP waivers.

A waiver will be considered upon initiation by the grantee or by the agency itself. The Administrator may, on a case-by-case basis, waive:

- (a) Any of the PMP elements in § 633.25 of this part if the Administrator determines the element is not necessary for a particular plan; or
- (b) The requirement of having a new project management plan submitted for a major capital project if a recipient seeks to manage the major capital project under a previously-approved project management plan.

PART 639—CAPITAL LEASES

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Subpart A—General

§ 639.1 General overview of part.

This part contains the requirements to qualify for capital assistance when leasing facilities or equipment under section 9 of the FT Act. The regulation is set out in four subparts, with this subpart A containing general information on scope and definitions. Subpart B contains the principal requirements of the part, including eligibility requirements, the self-certification system used, and identification of the various forms of leases and grants that are eligible under the program. Subpart B also contains a section on other Federal requirements that may apply. Subpart C includes the actual calculations that each recipient should undertake before certifying that a lease is cost-effective. Finally, subpart D contains requirements on early lease termination and project management in general.

§ 639.3 Purpose of this part.

This rule implements section 308 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17). Section 308 amended section 9(j) of the FT Act to allow section 9 recipients to use capital funds to finance the leasing of facilities and

equipment on condition that the leasing arrangements are most cost effective than purchase or construction. This part prescribes the policies and procedures governing the determination whether a lease is cost effective and to what extent it is eligible for capital assistance under section 9 of the FT Act.

§ 639.5 Scope of this part.

This part applies to all requests for capital assistance under section 9 of the FT Act where the proposed method of obtaining a capital asset is by lease rather than purchase or construction.

§ 639.7 Definitions.

In this part:

Applicant is included in the term “recipient”.

Capital asset means facilities or equipment with a useful life of at least one year, which are eligible for capital assistance.

Capital assistance means Federal financial assistance for capital projects under section 9 of the FT Act.

Capital lease means any transaction whereby the recipient acquires the right to use a capital asset without obtaining full ownership regardless of the tax status of the transaction.

Equipment means non-expendable personal property.

Facilities means real property, including land, improvements and fixtures.

Interest rate means the most advantageous interest rate actually available to the recipient in the market.

Present value means the value at the time of calculation of a future payment, or series of future payments discounted by the time value of money as represented by an interest rate or similar cost of funds.

Recipient means an entity that receives Federal financial assistance from FTA, including an entity that receives Federal financial assistance from FTA through a State or other public body. In this part, a recipient includes an applicant for Federal financial assistance.

FT Act means the Federal Mass Transit Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*

FTA means the Federal Transit Administration.

Subpart B—Requirements

§ 639.11 Lease qualification requirements.

(a) A lease may qualify for capital assistance if it meets the following criteria:

(1) The capital asset to be acquired by lease is otherwise eligible for capital assistance;

(2) There is or will be no existing Federal interest in the capital asset as of the date the lease will take effect unless as determined pursuant to § 639.13(b); and

(3) Lease of the capital asset is more cost-effective than purchase or construction of the asset, as determined under subpart C of this part.

(b) Once a lease has been qualified for capital assistance, it need not be re-qualified absent an affirmative act or omission by the recipient that vitiates the cost-effectiveness determination.

§ 639.13 Eligible types of leases.

(a) *General.* Any leasing arrangement, the terms of which provide for the recipient's use of a capital asset, potentially is eligible as a capital project under section 9 of the FT Act, regardless of the classification of the leasing arrangement for tax purposes.

(b) *Special circumstances.* A recipient may request FTA to determine the eligibility of a certain financial arrangement if the recipient believes it might not meet the requirements of this part.

(c) *Lump sum lease.* A recipient that wishes to enter into a lease which requires the draw down of a single lump sum payment at the inception of the lease (or payments in advance of the incurrence of costs) rather than periodic payments during the life of the lease must notify FTA prior to execution of the lease concerning how it will ensure satisfactory continuing control of the asset for the duration of the lease. FTA has the right to disapprove any arrangements where it has not been demonstrated that the recipient will have control over the asset. FTA may require the recipient to submit its cost-effectiveness comparison for review.

(d) *Pre-existing lease.* A lease entered into before grant approval, or before November 14, 1991 may be eligible for

capital assistance for costs incurred after approval of such a lease by FTA under this part, if

- (1) The lease is otherwise eligible under this part;
- (2) The recipient can demonstrate that the lease, when entered into, was more cost effective than purchase or construction; and
- (3) The procurement of the asset by lease was in accordance with Federal requirements that applied at the time the procurement took place.

§ 639.15 Eligible forms of grant.

A recipient may choose to receive capital assistance for a capital lease approved under this part—

- (a) In a single grant under which lease payments may be drawn down periodically for the life of the lease; or
- (b) In increments that are obligated by FTA periodically (usually in annual section 9 grants). In this case, a recipient—
 - (1) Must certify to FTA that it has the financial capacity to meet its future obligations under the lease in the event Federal funds are not available for capital assistance in subsequent years; and
 - (2) May incur costs under its lease before FTA's obligation of future increments of funding for such a lease. These costs are reimbursable in future grants, so long as the terms of the lease do not substantially change.

§ 639.17 Eligible lease costs.

- (a) All costs directly attributable to making a capital asset available to the lessee are eligible for capital assistance, including, but not limited to—
 - (1) Finance charges, including interest;
 - (2) Ancillary costs such as delivery and installation charges; and
 - (3) Maintenance costs.
- (b) Any asset leased under this part must be eligible for capital assistance under a traditional purchase or construction grant.

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§ 639.19 Other Federal requirements.

- (a) A recipient of capital assistance for a capital lease is subject to the same statutory and administrative re-

quirements as a recipient who purchases or constructs a capital asset.

- (b) A lessor of a capital lease is subject to the same statutory and administrative requirements as a direct seller of the same capital asset would be when the lessor—

- (1) Purchases or constructs a capital asset in contemplation of leasing it to a recipient; or
- (2) Modifies an existing capital asset in contemplation of leasing it to a recipient.

Subpart C—Cost-Effectiveness

§ 639.21 Determination of cost-effectiveness.

- (a) To qualify a lease for capital assistance, a recipient must—
 - (1) Make a written comparison of the cost of leasing the asset with the cost of purchasing or constructing it; and
 - (2) Certify to FTA before entering into the lease or before receiving a capital grant for the asset, whichever is later, that obtaining the asset by lease is more cost-effective than purchase or construction of such asset.
- (b) For purposes of this part, obtaining the asset by lease is more cost-effective than purchase or construction when the lease cost calculated under § 639.25 of this part is less than the purchase cost calculated under § 639.23 of this part.
- (c) If a recipient is unable to perform the prescribed cost-effectiveness comparison as described in this subpart, it may ask FTA to approve an alternate form of cost-effectiveness evaluation.

§ 639.23 Calculation of purchase or construction cost.

- (a) For purposes of this subpart, the purchase or construction cost of a capital asset is—
 - (1) The estimated cost to purchase or construct the asset; plus
 - (2) Ancillary costs such as delivery and installation; plus
 - (3) The net present value of the estimated future cost to provide any other service or benefit requested by the applicant in its proposal to obtain the capital asset.
- (b) The estimated cost to purchase or construct must be—
 - (1) Reasonable;

(2) Based on realistic current market conditions; and

(3) Based on the expected useful life of the asset in mass transportation service, as indicated in paragraph (c) of this section.

(c) For purposes of this part, the expected useful life of a revenue vehicle is the useful life which is established by FTA for recipients of Federal assistance under FTA's Circulars for section 9 recipients. For assets other than revenue vehicles, the applicant is responsible for establishing a reasonable expected useful life. If the recipient does not intend to use the capital asset it is proposing to obtain by lease in mass transportation service for its entire expected useful life, when calculating the purchase cost, the recipient must calculate the fair market value of the asset as of the date the lease will terminate pursuant to Guidelines found in section 108(b) of part II Standard Terms and Conditions for valuation of property withdrawn from transit use before the end of its useful life and subtract that amount from the purchase price. The resulting amount is the purchase price for purposes of this rule.

§ 639.25 Calculation of lease cost.

(a) For purposes of this part, the lease cost of a capital asset is—

(1) The cost to lease the asset for the same use and same time period specified in the recipient's proposal to obtain the asset by purchase or construction; plus

(2) Ancillary costs such as delivery and installation; plus

(3) The net present value of the estimated future cost to provide any other service or benefit requested by the applicant in its proposal to obtain the capital asset.

(b) The estimated lease costs must be reasonable, based on realistic market conditions applicable to the recipient and must be expressed in present value terms.

§ 639.27 Minimum criteria.

In making the comparison between leasing and purchasing or constructing an asset, recipients should ascribe a realistic dollar value to any non-financial factors that are considered by using performance-based specifications

in the comparison. In addition to factors unique to each recipient, the following factors are to be used where possible and appropriate:

- (a) Operation costs;
- (b) Reliability of service;
- (c) Maintenance costs;
- (d) Difference in warranties;
- (e) Passenger comfort;
- (f) Insurance costs;
- (g) Costs/savings related to timing of acquisition of asset.
- (h) Value of asset at expiration of the lease.

Subpart D—Lease Management

§ 639.31 Early lease termination or modification.

(a) Except as provided in paragraph (c) of this section, if a capital lease under this part is terminated or its terms substantially modified before the end of the period used in the cost-effectiveness evaluation, or if the recipient by an affirmative act or omission vitiates the cost-effectiveness determination of the lease, future lease costs will no longer qualify as eligible capital expenses. In addition, the recipient must reimburse the project—

(1) Any Federal funds paid for the portion of the lease term eliminated by early termination; and

(2) The Federal share of the excess, if any, of the present value of lease costs, which exceeds the purchase costs as calculated under subpart C of this part for the period of the lease up to the point of termination.

(b) Penalties resulting from early termination of a capital lease under this part are not eligible for Federal financial assistance.

(c) Paragraph (a) of this section does not apply if a lessor defaults on or otherwise does not meet its obligations under the capital lease and the recipient takes appropriate action to ensure that the procurement continues to be cost-effective. FTA shall be notified of any such event.

§ 639.33 Management of leased assets.

Each recipient must maintain an inventory of capital assets acquired by standard FTA project management guidelines.